SAP HANA ENTERPRISE CLOUD SUPPLEMENTAL TERMS AND CONDITIONS

These supplemental terms and conditions (the "HEC Supplement") are part of an agreement for certain SAP Cloud services between SAP and Customer and apply solely to SAP HANA Enterprise Cloud Services and any related Cloud Services purchased in an Order Form with the SAP HANA Enterprise Cloud Services and not any other SAP product or service. This HEC Supplement applies to an Order Form for SAP HANA Enterprise Cloud Services v.2-2019 or later (as identified in the footer of the Order Form).

1. DEFINITIONS

Definitions used but not defined in this HEC Supplement shall have the meaning ascribed to them in the Order Form or in documents incorporated therein.

1.1. "**Change Request**" means any changes in the Cloud Service as described in a written document signed by the parties and referencing the applicable Order Form.

1.2. "**Computing Environment**" means the SAP provided data center facilities, servers, networking equipment, operating systems, and data storage mechanisms selected and used by SAP to provide the HEC Services for the Customer, and includes the Production Computing Environment (PRD), and any other Computing Environment used for non-production purposes (NON-PRD) as agreed in the Order Form.

1.3. "**Documentation**" means SAP's then-current (i) Service Descriptions identified as Documentation, (ii) roles and responsibilities descriptions, and (iii) technical and functional documentation for Subscription Software, as applicable, made available to Customer by SAP.

1.4. "**HEC Services**" means the following Cloud Services provided by SAP under an Order Form and further described in the Agreement: SAP HANA Enterprise Cloud, BYOL model ("**HEC BYOL**"), and SAP HANA Enterprise Cloud, subscription model ("**HEC Subscription**"); and SAP HANA Enterprise Cloud, Advanced Edition Services model.").

1.5. "**LAN**" means a local area network that is a logical computer network that spans a relatively small area.

1.6. "**License Agreement**" means the agreement (other than this Agreement) under which Customer procured Licensed Software.

1.7. "**Licensed Software**" means the version of the applications, databases, software, tools and components owned or licensed by Customer (other than any Subscription Software) which Customer provides to SAP as part of the Cloud Services.

1.8. "**Non-PRD**" or "**Non-Production Computing Environment**" means any Computing Environment other than a PRD and may include development, quality assurance or sandbox environments.

1.9. "**Point of Demarcation**" means for MPLS, the port on the provider switch or, in case of a VPN for access, the external interface to the Internet of the VPN device of SAP's Computing Environment.

1.10. "**PRD**" or "**Production Computing Environment**" means that part of the Computing Environment which is used exclusively for the execution of live business transactions.

1.11. "**Service Description**" means written description of certain aspects of the Cloud Service including Enhanced Managed Services, and Disaster Recovery, as made available to Customer by SAP and identified as Documentation.

1.12. "**Subscription Software**" means software provided and hosted in the Computing Environment by SAP on a subscription basis as part of the HEC Subscription offering as identified in the Order Form.

1.13. "**Systems**" means one or more interrelated and interdependent components such as databases, servers, networks, load balancers, web dispatchers, tenants, etc. which when taken as a whole are used to operate a tier. Each combination of components used within each tier is equivalent to one System.

2. LICENSED SOFTWARE, SUBSCRIPTION SOFTWARE AND MAINTENANCE

2.1. **Licensed Software**

2.1.1. **Provision of Licenses**. Customer is responsible for providing all Licensed Software and obtaining all necessary rights from third parties required for SAP to run and host the Licensed Software. Customer will, at SAP's request, provide written verification of such rights from Customer and/or any applicable third party licensors. Customer grants to SAP the nonexclusive right to use the Licensed Software for the sole purpose of and only to the extent necessary for SAP and its subcontractors to provide the Cloud Service and to the extent as may be otherwise stated in the applicable Order Form. Customer hereby represents and warrants that it has all rights, licenses and authorizations necessary to grant the rights to SAP as set forth in this Section.

2.1.2. **Support**. Customer is responsible for obtaining and retaining SAP provisioned SAP Enterprise Support (or any lower level if agreed by SAP in writing) from SAP for SAP Licensed Software, and relevant support for non-SAP Licensed Software, for the duration of the Order Form.

2.1.3. **Licensed Software Modifications and Configuration**. Customer is responsible for testing and resolving source code, compatibility issues or other conflicts that may arise from modifications permitted under the License Agreement and any patches or workarounds or other changes provided by the licensor of the Licensed Software. Customer will inform SAP immediately about modification, add-ons or other changes to the Licensed Software. SAP may restrict customizations or modifications to the Licensed Software in order to be able to run the underlying Computing Environment in accordance with the scope of the Cloud Services.

2.2. **Subscription Software**

2.2.1. **Provision of Licenses.** SAP shall provide the Subscription Software during the Subscription Term solely for installation on the Computing Environment, and for archival or disaster recovery purposes. Except as set forth in Section 3.1 below, Customer is responsible for having the Subscription Software installed, including upgrades and new releases, into the Computing Environment.

2.2.1.1. Subject to the terms of the Agreement, the Software Use Rights shall apply to the Subscription Software during the Subscription Term. For the purposes of this Agreement, references in the Software Use Rights to "Software Agreement" shall read this "Agreement" and references to "SAP Software" shall read "Subscription Software".

2.2.1.2. Use of Subscription Software may occur by way of an interface delivered with or as a part of the Subscription Software, a Customer or third-party interface, or another intermediary system. Customer must hold the required licenses as stated in the Software Use Rights for any individuals that use the Subscription Software (directly or indirectly). Business Partners may use the Subscription Software only through screen access and solely in conjunction with Customer's use and may not use it to run any of Business Partners' business operations.

2.2.1.3. Notwithstanding any terms to the contrary in the Agreement, if Customer has an affiliate or subsidiary with a separate agreement for SAP Software licenses and/or support services with SAP SE, any SAP SE affiliate (including SAP) or any other distributor of SAP software, the Subscription Software shall not be used to run such affiliate's or subsidiary's business operations and such affiliate or subsidiary shall not receive any support services under this Agreement even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

2.2.1.4. If Customer has licensed a runtime database from SAP (or its Affiliates or any of its respective resellers or distributors) under the License Agreement or a separate agreement, Customer shall comply with the license restrictions for runtime databases when integrating the Subscription Software licensed hereunder with the SAP software licensed under the License Agreement and/or such separate agreement.

2.2.2. **Support.** HEC Subscription includes SAP Enterprise Support as defined in the Order Form.

2.2.3. **Subscription Software Modifications and Add-Ons.** Customer has the right to develop and use modifications and/or add-ons to SAP's Subscription Software (excluding any third party software) in furtherance of its permitted use of the Subscription Software under this Agreement. Customer is responsible for testing and resolving source code, compatibility issues or other conflicts that may arise from modifications permitted under this Agreement and any patches or workarounds or other changes provided by SAP for the Subscription Software. Customer will promptly inform SAP about modifications, add-ons or other changes to the Subscription Software. SAP may restrict customizations or modifications to the Subscription Software in order to be able to run the underlying Computing Environment in accordance with the scope of the Cloud Services.

2.3. **HEC Services**

2.3.1. Currently Supported Version of Licensed Software and Subscription Software.

2.3.1.1. Customer shall use, and all installations including the initial install of Licensed Software and/or Subscription Software in the Computing Environments shall be, a version or release of the Licensed Software and/or Subscription Software for which software maintenance and user support are current, as provided by the software vendor as specified in the relevant license agreement with such vendor. For SAP Licensed Software and/or Subscription Software such support (to the extent included in the applicable Order Form or License Agreement) is provided according to the current maintenance phases of SAP software releases as stated in https://support.sap.com/releasestrategy. For the purpose of this provision, "current" herein relates to "Mainstream Maintenance".

2.3.1.2. Customer acknowledges that if Customer is not on a version of the Licensed Software and/or Subscription Software under current maintenance or under SAP Enterprise Support (or any lower level if agreed by SAP in writing) for SAP Licensed Software, (i) SAP's abilities for the provision of support may be limited and SAP shall assume no responsibilities for such limitations and (ii) the System Availability Service Levels shall not apply. During the Subscription Term, Customer may be required to upgrade to more recent versions of SAP Licensed Software and/or Subscription Software to receive SAP Enterprise Support and the Systems Availability Service Levels, which may require Customer to incur additional costs. In the event that "Mainstream Maintenance" is no longer available for the Licensed Software and/or Subscription Software and a new version or release of the Licensed Software and/or Subscription Software is not available, the parties shall in good faith agree on a mutually agreeable solution, which may require Customer to incur additional costs.

2.3.1.3. SAP strongly recommends that Customer follows best practices for Software Lifecycle Management as published by SAP Active Global Support. Unless otherwise expressly stated in the Order Form and except as set forth in Section 3.1 below, Customer is responsible for having the Subscription Software and Licensed Software installed, including upgrades and new releases, into the Computing Environment. In the event such installation requires changes to Customer's Computing Environment as reflected in the "Systems Set-Up Table" in the Order Form, such changes will be agreed upon in a Change Request pursuant to the Change Request procedure.

2.3.2. **Maintenance Activities.** SAP performs regular scheduled maintenance activities to maintain OS security patch levels, database and application patches, infrastructure (network, compute, storage) maintenance and other scheduled proactive activities. The parties agree that such maintenance activities will be reasonably scheduled for a date, time and duration mutually agreed (in the Order Form or in advance of such activities) between SAP and Customer ("Scheduled Downtime") based on requirements and resources. In the event that Customer fails to cooperate with the scheduling and/or performance of such maintenance activities in a timely manner as recommended by SAP, Customer shall be solely responsible for any issues in the Cloud Service, including unexpected downtime, arising in connection with not performing such maintenance activities in a timely manner as recommended by SAP.

Notwithstanding the foregoing, SAP reserves the right to perform Emergency Maintenance activities at any time without Customer's prior consent. SAP will use reasonable efforts to provide Customer with forty-eight (48) hours advance notice regarding performance of Emergency Maintenance. In case of downtime during such Emergency Maintenance, the parties agree that such downtime will be considered to be "Emergency Downtime". "Emergency Maintenance" are maintenance activities required to address an unforeseeable circumstance aiming to prevent significant impact to the Cloud Service. Such situations include application of critical application patches and operating system security patches (security patches with priority "very high") and/or performing critical operating system activities (urgent upgrades and/or refresh of shared components).

Customer will be responsible for requesting and coordinating with SAP the application of non-critical security patches (all security patches with priorities "high", "medium", or "low") by way of a service request ticket. The parties agree that such upgrades will be performed during Scheduled Downtime or other Agreed Downtime.

2.3.3. To the extent that the Computing Environment provided by SAP includes Microsoft software products (e.g. specified in Section "System Set-up Table" in the Order Form), Customer agrees to the comply with the following conditions in connection with the Microsoft software products:

2.3.3.1. Customer may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on the Microsoft software products or that appear during use of the Microsoft software products;

2.3.3.2. Customer may not reverse engineer, decompile, or disassemble the Microsoft software products, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity;

2.3.3.3. any warranties, liability for damages and remedies, if any, are provided solely by SAP and not by Microsoft or its affiliates or subsidiaries;

2.3.3.4. any product support for the Microsoft software products included in the Computing Environment is provided to Customer by SAP and is not provided by Microsoft or its affiliates or subsidiaries;

2.3.3.5. all title and intellectual property rights in and to the Microsoft software products are owned by Microsoft or its suppliers. Microsoft software products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Customer's possession, access, or use of the Microsoft software products does not transfer any ownership of the Microsoft software products or any intellectual property rights to Customer;

2.3.3.6. SAP may disclose Customer's information regarding the use of Microsoft software products to Microsoft or Microsoft affiliates or subsidiaries in case of audits;

2.3.3.7. Customer acknowledges that the Microsoft software products are not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted and shall not be used in any application or situation where such Microsoft software products failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Examples of High Risk Use include: aircraft or other modes of human mass transportation, control of nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of Microsoft software products for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage.

3. SAP RESPONSIBILITIES AND OBLIGATIONS REGARDING CLOUD SERVICES

3.1. As part of the HEC Services, SAP will (i) provide the initial installation of the Subscription Software and/or Licensed Software, as applicable, in the Computing Environment, (ii) setup and configure relevant hardware/ software and monitoring/managing tools for the Computing Environment and Customer Systems, and (iii) introduce Customer to SAP's support and communications procedures. SAP's responsibility shall not extend beyond the Point of Demarcation described in Section 4 below.

3.2. At Customer's request prior to termination or expiration of an Order Form, SAP shall, within a reasonable time period provide to Customer in a reasonable backup media format being utilized by SAP the Customer Data stored in the Computing Environment. The Customer must verify the usability of this export within two (2) weeks of receipt. In the event Customer does not provide verification within the two week period, the exported Customer Data shall be deemed usable.

3.3. The Cloud Services are described in the applicable Service Description and roles and responsibilities Documentation.

4. CUSTOMER RESPONSIBILITIES AND OBLIGATIONS REGARDING CLOUD SERVICE

4.1. In addition to Customer's obligations set forth in the Agreement, Customer will change all passwords used to access the Cloud Service at regular intervals, no less frequently than once every six (6) months. If Customer learns of an unauthorized third party having obtained knowledge of a password, Customer will inform SAP thereof without undue delay and promptly change the password.

4.2. Customer is responsible for the connection to the Cloud Service, including the Internet connection to the Point of Demarcation, and the disconnection from the Cloud Service upon expiration or termination of the Agreement. Customer shall reimburse SAP for any costs that SAP incurs due to Customer's failure to disconnect from the Cloud Service. This section survives expiration or termination of the Agreement.

4.3. Customer shall use reasonable commercial efforts to ensure that Customer Data and the Licensed Software is free of all viruses, Trojan horses and comparable elements which could harm the computer systems or software used by SAP or its subcontractors to provide the Cloud Service.

4.4. SAP's provision of the Cloud Service is subject to Customer's prompt performance of its responsibilities set forth in the Agreement and the Documentation, and provision of qualified employees and resources required.

4.4.1. Primary point of contact in dealing with SAP (Project Manager), responsible for coordinating all activities and authorized to implement required technical changes.

4.4.2. Current list of key Customer contacts with access to the Computing Environment, including contact role, title, office phone number, cell phone number, e-mail address, etc.

4.4.3. Customer's policies and procedures regarding the authorization of access to the Computing Environment and necessary information regarding requirements for authorization to the Computing Environment (e.g. IP range, VPN Questionnaire, installation number etc.). Customer agrees to inform SAP of any changes to such information, policies and procedures as soon as practicable without delay.

4.4.4. A service user ("S-User") ID in the Computing Environment with the authorizations defined below. This S-User ID, which Customer uses to log on to SAP's Service Marketplace for software download and support, is required by SAP's Cloud Services resources to permit SAP Cloud Services resources to also log on and perform software download tasks necessary to obtain the software for set-up of the Computing Environment. Required authorizations include:

- Sending and/or creating and / or confirming and / or re-opening Customer messages
- SSCR key registration
- Processing service messages
- Opening service connections
- Software download
- Maintaining system data
- Requesting license keys

Customer authorizes SAP to set up and use an S-user with these authorizations. Additionally, in connection with sending and/or creating and/or confirming and/or re-opening Customer messages, Customer authorizes SAP to directly implement a Semi-Automatic Opening (SAO) to enable these messages. Customer will ensure that any authorizations that may be required for third parties or its employees will be provided promptly.

4.5. In the event that any SAP equipment is required at the Customer facility, Customer shall provide a physically secure and conditioned environment for any such equipment provided to Customer by SAP and Customer bears all risk for damages. SAP shall not be responsible for any damages to the extent resulting from Customer's failure to provide a physically secure and conditioned environment.

4.6. Customer is and will remain solely responsible for the definition, documentation and execution of its business processes including, but not limited to, configuration of systems management and application and data security policies, batch processing requirements, and compliance with other governmental or regulatory requirements. Customer is responsible to provide SAP necessary and sufficient documentation of its applicable processes in order for SAP to perform its Cloud Service responsibilities under the Agreement.

4.7. If Customer elects to have any services provided by a third party, SAP will have no liability for any defect or failure of the Cloud Service or Computing Environment caused by such third-party services, and Customer will not be entitled to any reduction in fees for the Cloud Service. SAP may deny access to the Cloud Service and/or Computing Environment to any third party service provider which SAP determines in its reasonable discretion poses a security or confidentiality risk to SAP systems, data or intellectual property.

4.8. **Third Party Licensed Software.** This Section shall apply if any Licensed Software is non-SAP software owned by Customer or licensed by Customer from a third party ("Non-SAP-Software").

4.8.1. Customer shall bear the sole responsibility for using Non-SAP-Software together with the Cloud Service and / or with the Licensed Software or within the Computing Environment.

4.8.2. In the event SAP reasonably believes that any such Licensed Software violates applicable law, infringes or misappropriates the rights of any third party, otherwise violates a material term of the Agreement or can result in material harm to the Cloud Service, SAP may require such Licensed Software be promptly removed from the Computing Environment.

5.   ESCALATION CONTACTS

Each party will nominate a representative who will be the other party's prime point of contact with respect to the performance of the Cloud Services. Each party will further nominate a representative who will serve as a decision-making authority in case of any dispute or escalation that cannot be settled between the primary points of contact within a reasonable period of time.